

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HOWARD KATZ

Plaintiff

Case No. 07-CV-8314

vs.

JOE ROBERT MOGUS
ALL THAT GLITTERS, INC.

-----x

**AFFIRMATION IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS UPON
DEFENDANT MOGUS FOR FILING A FRIVOLOUS MOTION AND FOR
CONTEMPT OF COURT**

I, Shmuel Klein, counsel for the Plaintiff herein, affirm under penalty of perjury, state that I have knowledge of the following and state the same is true except for those matters stated "upon information and belief" and as to those matters, I believe them to be true.

1. In a telephone conference on November 5, 2007, The Honorable Judge Kevin Nathaniel Fox advised Defendant Mogus to determine which motion of the three motions he filed, if any, raises a previously undecided issue which remains to be resolved in this action, and that he should withdraw the Motions which were already decided in the Eastern District Court of New York.

2. The Court also signed an Order on November 6, 2007, requesting Defendant Joe Mogus to advise the Court on or before November 13, 2007 which of the Motions he will withdraw because they were already decided in the Eastern District Court of New York.

3. On or about November 9, 2007, defendant Mogus sent an undated letter to the Court stating that he is "willing to withdraw the motions regarding the conduct of Attorney Kline (sic)," but, "can not withdraw the 3 other motions filed."

4. Defendant Mogus contends that the issues in these Motions are serious.

Defendant again brings up the issues of Jurisdiction, the alleged falsification of the evidence and the age of the evidence.

5. Judge Irizarry made it clear in her September 7, 2007 Memorandum and Order that Jurisdiction is proper in the Southern District of New York. This issue was already determined and therefore is the legal authority in this matter.

6. Defendant Mogus did not withdraw his Motions, despite the Court's Order for him to do so. Defendant should be sanctioned for his contempt of the Court's Orders.

7. Defendant's motions are frivolous and were filed in bad faith. Plaintiff is being prejudiced by such delay and Defendants' endless ploys to delay this case and spend Plaintiff's money for attorney's fees.

8. On September 29, 2007, the instant action was transferred from the Eastern District of New York to this District, pursuant to the Order of Honorable Judge DORA L. IRIZARRY, dated September 7, 2007.

9. In the Order, the Judge DENIED Defendant's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction and Improper Venue, finding that subject matter Jurisdiction is in the Southern District of New York since sufficient business activity involving allegations of the Complaint indeed occurred in Manhattan.

10. Notwithstanding the Honorable Judge Irizarry's Order, Defendant, Joe Mogus, filed, in this Court on October 10, 2007, a "Motion for Dismissal case 07-SIV-008314 Evidence Presented Regarding Jurisdiction Inappropriate Too Old Beyond Time Limit Unreasonably Old" (sic); a "Motion to Dismiss this Case 07 SIV 008314 as Evidence Presented by Plaintiff False falsified and Untrue and Contradictory,

Manipulated. This Warrants Dismissal.” (sic); and a “Motion for Dismissal case 07 SIV 008314 Due to Lack of Presence in this Jurisdiction Minimal, Not Substantial Part of Business Done”. (sic).

WHEREFORE, It is respectfully requested that the Court impose sanctions upon Defendant pursuant to FRCP, Rule 11; that Motion(s) to Dismiss should be denied in their entirety and that Plaintiff be awarded his reasonable attorneys fees and costs in opposing these motions in the amount of \$1,800.00 plus \$10,000.00 sanctions.

DATED: February 6, 2008

Spring Valley, NY

/s/
Shmuel Klein (SK 7212) Fed Court Only
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